

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALEJANDRO FLORES-PANSO,

Petitioner,

V.

Case No. C13-1923-TSZ-JPD

NATHALIE ASHER, Field Office Director,
Immigration and Customs Enforcement,

REPORT AND RECOMMENDATION

Respondent.

I. INTRODUCTION AND SUMMARY CONCLUSION

On October 25, 2013, *pro se* petitioner Alejandro Flores-Panso filed a proposed Petition for Writ of Habeas Corpus and Request for Emergency Stay of Removal Under 28 U.S.C. § 2241, seeking a stay of removal so that he can challenge the determination that he is not eligible under the Deferred Action for Child Arrivals (“DACA”). Dkt. 1-1. He also asks the Court to order the Board of Immigration Appeals (“BIA”) to re-open his case or release him on bond pending resolution of his DACA application. Dkt. 7. The Court granted a temporary stay of removal pending resolution of the habeas petition. Dkt. 3. Respondent now moves to dismiss the habeas petition and lift the temporary stay, arguing that the Court lacks jurisdiction. Dkt. 9.

1 For the reasons discussed below, the Court recommends that petitioner's proposed habeas
2 petition, Dkt. 1-1, be DENIED, respondent's motion to dismiss, Dkt. 9, be GRANTED, the
3 temporary stay of removal, Dkt. 3, be VACATED, and the case be DISMISSED with prejudice.

4 **II. BACKGROUND**

5 Petitioner is a native and citizen of Mexico. Dkt. 10-1 at 3. On February 13, 2009, U.S.
6 Immigration and Customs Enforcement ("ICE") encountered petitioner in Arizona and arrested
7 him after determining that he was an alien who had illegally entered the United States. *Id.*
8 Petitioner was processed for expedited removal, and an order of expedited removal was entered
9 the same day, charging petitioner as removable under 8 U.S.C. § 1182(a)(7)(A)(i)(I) ("[A]ny
10 immigrant at the time of application for admission . . . who is not in possession of a valid
11 unexpired immigrant visa, re-entry permit, border crossing identification card, or other valid entry
12 document . . . is inadmissible."). *Id.* at 5. Petitioner was removed on or about February 14,
13 2009. *Id.* at 8.

14 On April 5, 2010, ICE encountered petitioner again at the Grant County Jail in
15 Washington State after he was arrested on charges of Minor in Possession of Alcohol and
16 Operating a Vehicle. *Id.* ICE issued a notice of intent to reinstate the prior order of removal, and
17 on April 19, 2010, petitioner was removed for a second time. *Id.* at 11-13.

18 On October 15, 2013, ICE encountered petitioner a third time, again at the Grant County
19 Jail where he was being held on a charge of Failure to Appear. *Id.* at 15-17. The following day,
20 ICE served petitioner with a notice of intent to reinstate the original order of removal, and also
21 determined that he did not meet the eligibility requirements for DACA. *Id.* at 19, 24.

22 Petitioner was scheduled for removal on October 25, 2013, the same day he filed the
23 instant habeas petition and request for emergency stay of removal. *See* Dkt. 1. Other than the

1 temporary stay of removal entered by this Court, Dkt. 3, there are no barriers preventing ICE
2 from removing petitioner back to Mexico, *see* Dkt. 9-1.

III. DISCUSSION

4 | A. Petitioner's current detention

5 “[W]hen an alien subject to removal leaves the country, the removal order is deemed
6 executed. If the alien reenters the country illegally, the order may not be executed against him
7 unless it has been ‘reinstated’ by an authorized official.” *Alcala v. Holder*, 563 F.3d 1009, 1013
8 (9th Cir. 2009) (quoting *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 487 (9th Cir. 2007)). A
9 prior order of removal may be reinstated “[i]f the Attorney General finds that an alien has
10 reentered the United States illegally after having been removed or having departed voluntarily,
11 under an order of removal.” 8 U.S.C. § 1231(a)(5). Section 1231(a)(5) further provides that the
12 prior order of removal “is not subject to being reopened or reviewed, the alien is not eligible and
13 may not apply for any relief under this chapter, and the alien shall be removed under the prior
14 order at any time after the reentry.” *Id.* The District Director and the ICE Field Office Director
15 have discretionary authority to determine the custody status of aliens who are detained pending
16 removal. *See* 8 C.F.R. § 241.8(f); 8 U.S.C. § 1231.

17 Here, petitioner makes no challenge to ICE’s authority to detain him or the terms of his
18 detention. Accordingly, the Court recommends petitioner’s request for release from custody be
19 denied.

20 | B. Petitioner's challenge to his order of removal

21 The REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (May 11, 2005), stripped
22 district courts of habeas jurisdiction over final orders of removal and vested jurisdiction to
23 review such orders exclusively in the courts of appeals. 8 U.S.C. § 1252. Section 1252(a)(5)

1 provides in relevant part that “a petition for review filed with an appropriate court of appeals in
2 accordance with this section shall be the sole and exclusive means for judicial review of an order
3 of removal entered or issued under any provision” of the Act. 8 U.S.C. § 1252(a)(5). In
4 addition, section 1252(g) states that “no court shall have jurisdiction to hear any cause or claim
5 by or on behalf of any alien arising from the decision or action by the Attorney General to
6 commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this
7 chapter.” 8 U.S.C. § 1252(g) (emphasis added). District courts thus lack jurisdiction over
8 habeas petitions that seek judicial review of “any ‘questions of law and fact’ arising from an
9 order of removal.” *Morales-Izquierdo v. Dep’t of Homeland Sec.*, 600 F.3d 1076, 1080 (9th Cir.
10 2010) (quoting 8 U.S.C. § 1252(b)(9)).

11 “A request to stay an order of removal based on a pending collateral claim does not
12 escape the jurisdiction stripping provisions of the REAL ID Act.” *Mancho v. Chertoff*, 480 F.
13 Supp. 2d 160, 162 (D.D.C. 2007). Indeed, the Ninth Circuit has found that where an alien has
14 been ordered removed from the United States, the district court lacks jurisdiction to hear his
15 habeas petition challenging the denial of his adjustment-of-status application. *Morales-*
16 *Izquierdo*, 600 F.3d at 1083-85.

17 Here, petitioner challenges his final order of removal by asking the Court to direct the
18 BIA to reopen his case and reassess his eligibility under the DACA. See Dkts. 1-1, 7. The
19 reinstatement order to which petitioner is subject qualifies as an order of removal that can only
20 be contested in a petition for review filed directly with the Ninth Circuit. See *Morales-Izquierdo*,
21 600 F.3d at 1082; *Garcia de Rincon v. Dep’t of Homeland Sec.*, 539 F.3d 1133, 1140-41 (9th Cir.
22 2008). This Court also lacks jurisdiction over petitioner’s claim that a stay of removal is
23 warranted so that he can seek entitlement to DACA. See *Morales-Izquierdo*, 600 F.3d at 1085.

1 Because this Court is without jurisdiction to consider the merits of petitioner's habeas petition, it
2 also lacks jurisdiction to stay petitioner's removal.

3 IV. CONCLUSION

4 For the foregoing reasons, the Court recommends that petitioner's proposed habeas
5 petition, Dkt. 1-1, be DENIED, respondent's motion to dismiss, Dkt. 9, be GRANTED, the
6 temporary stay of removal, Dkt. 3, be VACATED, and the case be DISMISSED with prejudice.
7 A proposed Order accompanies this Report and Recommendation.

8 DATED this 10th day of February, 2014.

9 
10 JAMES P. DONOHUE
11 United States Magistrate Judge